IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 807 OF 1980

Textile Corp. of Maratwada ....*Plffs.*
vs.
Dhiren N. Shah and Ors ....*Defnds.*

M.S. Rama i/b. S.J. Parekh for the plffs.

None for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 29TH JUNE, 2005.

P.C. :

1. The present suit has been filed by the plaintiff for the recovery of Rs.6,52,202.75/- with interest at the rate of 18%p.a. from the date of the suit till payment and or realisation. The present suit has been filed in the background of following facts :

2. The defendant no.1 is a dealer in textile clothing and are carrying on business in the name and style of M/s. Dhiren Enterprises. Defendant no.2 is a partnership firm and defendant nos.3 to 7 of the said defendant no.1 firm. It is the case of the plaintiff that pursuant to the said negotiations arrived at between the plaintiff and the second defendant the plaintiffs addressed a letter dated 56.7.1979 appointed the second defendant as an indenting agent for identing the said goods. The said appointment was a period of 31.12.1979. on the various terms and conditions which are more specifically set out in the said letter. Defendant nos.4 to 7 accepted the said terms and conditions. Thus under an agreement dated 5.7.1979 a contract has been arrived at between the plaintiff and defendant nos.2 to 7 to act as indenting agent.

3. Pursuant during the period from March 1979 to December 1979 the second defendant acted as indenting agent of the plaintiffs and placed

various orders with the plaintiffs for supply of bleached long cloth and dyed Poplin, dyed Cambric and printed poplins. In pursuance of the said orders the plaintiff sold and delivered the goods to the first defendant and inrespect thereof issued invoices and delivery challans. The defendant no.1 has also signed three contracts out of the total four contracts for the supply of the said goods. The defendants had requested to the plaintiffs for the payment of the price of goods sold and delivered they will drew hundies on the partners of the defendant firm which can be discounted by the plaintiffs. It was further agreed that the defendants shall make payment of the said hundies on its due dates when presented to them. In view of the aforeaid arrangement the plaintiff sold and delivered the said goods and drew the hundies on the defendants which was in turn accepted by the defendants. The plaintiff thereafter discounted the said hundi with the State Bank of India. The State Bank of India when presented the hundi to the defendants for its payment on due dates,the same have been

discounted by the defendant. Thus inrespect of the goods sold and delivered the plaintiff did not receive the price of the said goods. The plaintiff is thus entitled to receive the amount covered under 35 hundi aggregating to Rs.6,22,539.07/-. In view of the fact that the said hundi were dishonoured when they were presented for payment to the first defendant the plaintiff called upon the defendant to pay the amount immediately by cheques. A letter was addressed on 13.2.1980 calling upon the first defendant to make the aforesaid payment. However the defendant has failed and neglected to make the payment. On 20.2.1980 the first defendant claimed that the first defendant has not received any goods and therefore they have returned the said hundi to the second defendant and thus denied their liability to make payment. The said hundi carried on interest at the rate of 18% p.a. in a addition thereto an agreement between the parties also provides for payment of interest at the rate of 18% p.a. In the aforesaid circumstances the plaintiff gave notice to the

defendants and since payment was not received the plaintiff has filed the suit for the recovery of principal amount of Rs.6,22,539.47/- alongwith interest as on the date of the suit of Rs.29,663.28/- aggregating to Rs.6,52,202.75/-.

4. The defendant no.1 and 2 to 7 and defendant no.3 have filed written statements and inter-alia contended that they are not liable to make the payment. According to defendant no.8, 18 out of 35 hundies were lost and misplaced by the State Bank of India and thus they are not liable to pay the amount covered thereunder. It has been further contended that in view of the hundies lost the plaintiffs are not the holder in due course and suit cannot be maintained by the plaintiffs. The defendant has further stated that the defendants have not received the goods and in any event the goods which were received by the defendants were found to be defective and there were complaints about the quality of the said goods. The defendant no.2 to 7 has filed written statement and has contended that the said

hundi were drawn for facilitating accounting adjustments in view of the contract entered into between the plaintiff and the second defendant as indenting agent.

5. The learned counsel for the plaintiff has tendered compilation of documents which contains 18 original hundies and 17 copies of the original hundies. Learned counsel for the plaintiff states that the said hundies should be taken on record as they are the xerox copies of the original hundi. The plaintiff has also filed various invoices and delivery challans inrespect of the said goods sold and delivered.

6. The defendant though filed written statements has not appeared in the matter inspite of the said fact that the said matter was adjourned from time to time. The plaintiff has tendered affidavit of evidence of one Mr.Arvindkumar Desai dated 28.6.2005. In his evidence he has deposed that the defendants are liable and he has produced the various documents insupport of his

evidence. The said witness is not cross examined. Inview thereof the same is taken on record and the same is taken as correct.

6. In the aforesaid I answer the issue no.1 in affirmative that the plaintiff has proved that the plaintiff has sold and delivered the said goods to the first defendant and the second defendant has acted ass indenting agent.

7. Issue no.2 is also proved by the plaintiff. Defendant no.2 has executed 35 hundies aggregating to Rs.6,22,539.47/-. The defendant No.2 has further proved that the said hundi were dishonoured on presentation and that at the foot of the account the plaintiff is entitled to recovery of the principal amount of Rs. 6,22,539.47/- alongwith interest of sum of Rs.29,663.28/- totalling to Rs.6,52,202.75/-. The defendant has failed to prove the issue no.5 and 6 and thus I answer the same in negative. The plaintiff has made a statement that the plaintiff does not desire to press the suit

against the legal heirs of defendant nos. 3 and 4 and the suit as against the legal heirs of the defendant no.3 is dismissed. In so far as other defendants are concerned the following decree is passed :

> That the defendants excluding the legal heirs of the defendant shall pay a sum of Rs.6,52,202.75/- alongwith interest at the rate of 18% p.a. from the date of the suit till payment and or realisation.

sd/-

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